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Supreme Court, U.S.
FILED

AUG 22 2002

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No. 02-0141

In The

Supreme Court of the United States

SILVIO GIANNETTI;
GIANNETTI INVESTMENT COMPANY,

Petitioners,

v.

JERRY PRUZINSKY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF THE CASE

Respondent Jerry Pruzinsky ("Pruzinsky") was married to Anna Marie Walter on May 7, 1968. They operated petitioner's apartment complex for many years. Petitioner Silvio Giannetti ("Giannetti") sued his daughter for misappropriation of certain trust funds and included Pruzinsky in the suit for other alleged defalcations. A default judgment was entered against Pruzinsky October 25, 1993. On December 6, 1994, the parties entered into a settlement whereby Pruzinsky turned his pension and his interest in stock in Giannetti companies over to Giannetti and dismissed his appeal of the judgment. The settlement provided for the valuation of the turned over assets and entry of judgment by the court whether for or against Giannetti in accord with the valuation of the assets.

In the interim, the debtor Ann Marie divorced Pruzinsky (taking with her all joint assets consisting of the residence and a bar, Pruzinskys, Inc.), married a patron of their bar, and filed for protection under Chapter 11 of the Bankruptcy Code.

Litigation ensued in the Bankruptcy Estate with Giannetti actively opposing all actions favorable to Pruzinsky and appealing every decision in Pruzinsky's favor.

This dispute concerns Giannetti's claim in the Bankruptcy Estate in which Pruzinsky was not a party and did not participate in the negotiations (see JA 86). The objection found at R 306, JA 70 ensued. At the hearing, Judge Shapero asked, "How can – how can the debtor and yourself, between the two of you eliminate Mr. Pruzinsky's rights?" The Court continued, "All right so I don't see how I can include language in there which, in effect, gives up rights, frankly. So I will sign an order that excises from

the proposed order the language I was talking about, the words: and/or her ex husband Jerry Pruzinsky I'll sign that order." JA at 114, 117.

As pointed out in Giannetti's brief, there was some confusion over the language of the order. On motion to clarify, Judge Shapero found that the order presented did not reflect his ruling and granted Pruzinsky's motion for reformation in according with his stated ruling (above). Judge Shapero relied upon Fed. R. Civ. P. 60(b)(6) and, indeed, some textual and case law did support the position. See Ano, Construction and Application of Rule 60(b)(6) of Federal Rules of Civil Procedure Authorizing Relief from Judgment or Order for any other Reason, 15 ALR Fed. 193. "Errors or omission in the judicial process, . . . by the trial judge . . . may be the bases of relief under Rule 60(b)(6)." See e.g., *Bank of Montreal v. Olafsson*, 648 F.2d 1078 (6th Cir. 1981); *Hand v. U.S.*, 441 F.2d 529 (5th Cir. 1971) and *Central Cartage v. Fewless*, 232 Mich. App. 517 (1998). See P. 14 Final Brief of Appellant, 6th Circuit Court of Appeals.

The trend of the case law seems to have changed the section under which courts should reform their orders to state their intentions. As noted in note one of the Pruzinsky appeal to the District Court.

> Some authorities hold that the authority to revise a judgment to reflect the Court's intention is properly brought as correcting an error pursuant to Fed. R. Civ. P. 60(a). See 12 Moore's Fed. Practice (3rd Ed.) 60.11 [2][b]. In either case, the test is the court's expressed intention at the time the original judgment is entered. See for example *Robi v. Five Platters*, 918 F.2d 1439, 1445 (9th Cir. 1990), change in the number of trademarks

affected, *Blanton v. Anzalone,* 813 F.2d 1574, 1577 N3 (9th Cir. 1987) to delete award of pre-judgment interest, *In re Marc Rich & Co. AG,* 739 F.2d 834, 836-7 (2nd Cir. 1984), to the same effect. See also language in *In re Frigitemp Corp.,* 781 F.2d 324, 327 (2nd Cir. 1985) where the court found that the order reflected the jury's position which made no reference to interest.

As noted in respondent's brief, movant never relied upon this order but since 1995 has pursued the subdivision of the property. JA 82, 83.

REASONS NOT TO GRANT CERTIORARI

28 U.S.C. § 1254(1) provides that review of Court of Appeals decision is by writ of certiorari.

Rule 10 of this Court provides the following concerning Certiorari from the Courts of Appeals.

Since there are no conflicting Court of Appeals decisions and no conflict with a State Supreme Court decision, the only grounds would appear to be that the decision appealed from has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's supervisory power. A review of textural material concerning departure from usual course of "Judicial Proceedings" (13 Moore's Federal Practice § 810.27) indicates that while this court is in complete control of its own docket that certiorari is generally granted in those instances where (A) the court exercises a

writ in circumstances not normally exercised by that court,[1] or (B) would change criminal procedure,[2] (C) or to clarify boundaries of jurisdiction of a lower court.[3] Reaching back to affirm an oral statement, even if improper, does not rise to this level. In short, there does not appear to be compliance with Rule 10 by the petitioner.[4]

Respectfully submitted,

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[1] Mandamus by the court of Appeals *Thermtron Products Inc. v. Hermansdorfer,* 423 U.S. 336, 965 S. Ct. 584, 46 L. Ed. 2d 542 (1976).

[2] *McNabb v. U.S.*, 318 U.S. 332, 63 S. Ct. 608, 87 L. Ed. 819 (1943).

[3] *New York City Transit Auth. v. Beager*, 446 U.S. 568, 995 S. Ct. 1355, 59 L. Ed. 2d 587 (1979).

[4] Note: The cases dealing with Bankruptcy procedure such as *Northern Pipeline Const. Co v. Marathon Pipeline Co.*, 458 U.S. 50, 73 L. Ed. 2d 598, 102 S.Ct. 2858 (1982) have generally limited that court's jurisdiction over non parties in the same way Judge Shapero did in the instant case.